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Attorneys for Defendants  
ACTIVISION BLIZZARD, INC. and  
ACTIVISION PUBLISHING, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MIL-SPEC MONKEY, INC., a California  
corporation,

Plaintiff,

v.

ACTIVISION BLIZZARD, INC., a Delaware  
corporation; ACTIVISION PUBLISHING,  
INC., a Delaware corporation; and DOES 1 -  
25, inclusive,

Defendants.

CASE NO. CV14-02361 RS

**DECLARATION OF GILBERT LEE IN  
SUPPORT OF MOTION FOR PARTIAL  
SUMMARY JUDGMENT AS TO  
PLAINTIFF'S SECOND, THIRD,  
FOURTH, AND FIFTH CLAIMS FOR  
RELIEF**

Date: November 20, 2014  
Time: 1:30 p.m.  
Judge: Hon. Richard Seeborg

1 I, Gilbert Lee, declare as follows:

2  
3 1. I am an attorney at law, duly licensed to practice law in the State of California. I  
4 am an associate at the law firm Mitchell Silberberg & Knupp LLP, counsel of record for  
5 Defendants Activision Blizzard, Inc. and Activision Publishing, Inc. I have personal knowledge  
6 of the following facts and, if called as a witness, could and would competently testify thereto.

7  
8 2. Attached as **Exhibits 4 and 5 to the Declaration of Yale Miller** are DVDs  
9 containing true and correct copies of two excerpts of footage from the commercial release of the  
10 video game *Call of Duty: Ghosts* (“*Ghosts*”). The DVD was created under my supervision and at  
11 my direction. The DVD can be played using any standard DVD player. The footage contained on  
12 the DVD was captured using a copy of *Ghosts* running and operating on a Microsoft Xbox One  
13 console. To capture the video and create the DVD, the output from the Microsoft Xbox One was  
14 connected to a personal computer using an AJA Kona LH1 capture card and Apple Final Cut Pro.  
15 Different aspects of *Ghosts* were played by an Activision employee, and the video was captured  
16 by the AJA VTR Xchange software and edited with Apple Final Cut Pro to create the DVD. The  
17 footage contained on the DVD reflects actual *Ghosts* gameplay.

18  
19 3. The DVDs contains the following gameplay sequences from *Ghosts*, each of which  
20 can be accessed via the title menu of the game:

- 21  
22 1) **Exhibit 4 - “COD Ghosts MP Patch Customization”**: This gameplay sequence  
23 depicts various “Customize Appearance” options from the “Create-A-Soldier”  
24 feature, including representative selections for each option. For patches, included  
25 are the initial screens for the eight “groupings” of patches – namely, standard issue  
26 patches, first class patches, game mode patches, gear patches, perk patches, weapon  
27 patches, classified patches, and DLC patches. A description of various “Customize

Appearance” options appears in Paragraphs 9-10 of the accompanying Declaration of Yale Miller.

2) **Exhibit 5 - “COD Ghosts MP Patch Gameplay”**: This gameplay sequence depicts actual footage from one of *Ghosts*’ multiplayer game play modes, “Domination.” The footage included shows the player initiating the game mode, starting the match, selecting a soldier, and then playing and concluding the match. A description of how patches are used in multiplayer game play appears in Paragraphs 11-12 of the accompanying Declaration of Yale Miller.

4. Attached as **Exhibit 3 to the Declaration of Yale Miller** is a DVD containing a true and correct copy of the *Official Call of Duty: Ghosts Single Player Campaign Trailer*, which was released on or about September 10, 2013. This trailer was supplied to me by personnel at Activision. The DVD containing this trailer was created under my supervision and at my direction.

5. Attached as **Exhibit 6 to the Declaration of Yale Miller** is a DVD containing a true and correct copy of the *Official Call of Duty: Ghosts Multiplayer Reveal Trailer*, which was released on or about August 14, 2013 and is referenced in paragraph 30 of Mil-Spec Monkey, Inc.’s Complaint. This trailer was supplied to me by personnel at Activision. The DVD containing this trailer was created under my supervision and at my direction.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 16th day of October 2014 at Los Angeles, California.

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/s/ Gilbert S. Lee

Gilbert S. Lee